

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 98-M-0667 - In the Matter of Electronic Data Interchange

Case 98-M-1343 - In the Matter of Retail Access Business Rules

REPLY COMMENTS OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
ON THE CONTEST PERIOD PROPOSAL

Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) hereby submits the following comments in reply to initial comments by parties in the matter of the contest period proposed by U.S. Energy Saving Corporation (“US Energy Saving”)¹. These comments address several issues raised by the comments of IDT, the Small Customer Market Coalition (“SCMC”), Intelligent Energy, and the Joint Utilities.

As noted in Con Edison’s initial comments, the contest period proposed by US Energy Savings provides an automated vehicle for a process already in use by many ESCOs who follow up with their customers when they receive a drop notification from the Utility. The process neither “interjects the utility into what is essentially a dispute between the Incumbent ESCO and the customer” (Joint Utility, p.3) nor places ESCOs in a position of policing each other (Intelligent Energy, p. 1). Instead, it facilitates action that needs to be taken should a customer decide to stay with the incumbent ESCO as a result of the incumbent ESCO’s contact. In the process proposed by US Energy Savings, the customer would not have to contact the utility to cancel their enrollment with the new ESCO should they decide to stay with their incumbent ESCO. Under this proposal, an automated vehicle, specifically an EDI transaction, would be available to the incumbent ESCO to effect the cancellation of the pending enrollment.

The Joint Utilities contend that no ESCOs have raised the issues noted in US Energy Savings’ petition (Joint Utilities, p. 7) and that “US Energy’s Contest Period proposal looks like

a solution in search of a problem” (Joint Utilities, p. 8). IDT avers, “Petitioner has not provided a scintilla of evidence . . . to support its request to modify the UBPs so that an incumbent ESCO may cancel a pending enrollment request by a different ESCO for its customer.” In fact, at least four separate ESCOs have raised this issue to Con Edison in the past few months. The process is of greatest concern to ESCOs offering fixed-price, fixed-term contracts. The Uniform Business Practices (“UBP”) switching rules allow customers to switch ESCOs without regard to their contractual obligations. Due to this, ESCOs offering fixed-price contracts may make efforts to retain their customers when they receive notification that their customers have been de-enrolled.

The process proposed by US Energy Savings for an automated notification by the incumbent ESCO to the utility, through an EDI transaction, provides an alternative to the customer’s contacting the utility if the customer decides to stay with the incumbent ESCO. In addition, the EDI transaction sent by the incumbent ESCO and the ESCO’s retained proof of customer authorization create an audit trail that can be used if the customer or enrolling ESCO subsequently challenges the de-enrollment.

Two parties claimed that notices required by EDI business process documents and the UBP are inadequate to inform affected parties of customer enrollment changes. With respect to customer notifications when the pending enrollment is cancelled, the Joint Utilities express concern that the US Energy Savings petition does not provide for customer notification should the incumbent ESCO directly notify the utility to cancel the pending enrollment. In fact, the Reinstatement Business Process (NY EDI TS814 Reinstatement Business Process (v1.0), May 29, 2002, p. 10) provides, “Utility may send customer letter confirming rescission of pending enrollment for new E/M and reinstatement with current E/M” as a result of cancellation of a

¹ This matter was noticed in the State Register under action numbers 98-M-0667SA57 and 98-M-1343SA14.

pending enrollment. Should the contest period proposal be adopted, this process would have to be modified and made mandatory.

With respect to the utility's letter notifying customers that they have been enrolled with an ESCO, which is required by UBP section 5.E.1, SCMC suggests that this letter should inform the customer to contact both the incumbent and pending ESCOs of the decision to cancel service with the pending ESCO (SCMC, p. 2). Con Edison is concerned that this change to the notification letter may confuse the customer and is unnecessary, especially since the incumbent ESCO will most probably contact the customer following its receipt of the EDI drop notification issued by the utility when the customer is enrolled by a new ESCO.

The Joint Utilities also contend (p. 11) that notification to the enrolling ESCO that the customer is already with an ESCO is a new process and express concern that such a notification may raise customer privacy issues. In fact, this process is already in place. Specifically, the customer's rate, which for Con Edison indicates that the customer is taking retail access service, is provided on both the EDI 867 Historical Usage transaction that may be available to the ESCO prior to customer enrollment² and the EDI 814 Enrollment response that the new ESCO receives from the utility following the submission to the utility of the customer's enrollment. SCMC's recommendation (pp. 1-2) that this information also be provided through utility websites is already in place for Con Edison, i.e., the website facility that provides historical usage already provides customer rate information.

Finally, Intelligent Energy argues (fourth unnumbered page) that the UBP enrollment rules should be changed "so that a customer's rescission period occurs after the enrollment." Intelligent Energy contends that allowing ESCOs to submit enrollment requests "prior to the

² The ESCO can neither obtain customer information nor enroll a customer without obtaining customer authorization and the customer's account number.

expiration of the rescission period” would not erode customer protections while it met US Energy Savings’ goals of ensuring that customers are served by the ESCO of their choice, preventing slamming, helping customers avoid early termination fees, and avoiding disputes between ESCOs over customers.

The UBP requires ESCOs to allow the customer a three-day rescission period before they send the customer’s enrollment to the utility; during this period, the customer has the opportunity to rescind the contract for service. The “pending” period that follows enrollment allows the customer to return to utility service or service with the incumbent ESCO before service with the new ESCO becomes effective. However, if the pending enrollment is cancelled within this latter period, the customer may be subject to a penalty for early termination because the contract with the new ESCO has already become effective. Despite this, pursuant to the UBP, the distribution utility must invite the customer to de-enroll during the pending period if the customer determines that the pending enrollment is unauthorized or no longer his or her choice.³

Con Edison agrees with Intelligent Energy’s recommendation to move the rescission period into the pending period but proposes that the rescission period be extended so that it coincides with the period during which the customer’s enrollment may be cancelled, that is, through the pending period up to the final three-day “lockout” period immediately preceding the date ESCO service is scheduled to begin. If this change were adopted, the customer would be able to de-enroll during this single rescission/cancellation period without potentially becoming liable to its new ESCO for an early termination penalty.

³ Section 5.E.1. requires that the distribution utility send the customer a verification letter no later than one calendar day after the acceptance of an enrollment request and that the letter “inform the customer that if the enrollment is unauthorized or the customer decides to cancel it, the customer is required immediately to so notify the distribution utility and the pending ESCO.”

For the reasons stated here and in the Company's initial comments, Con Edison respectfully requests that the US Energy Savings proposal, as modified by the Company's suggestions in its initial comments and these reply comments, be adopted.

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Respectfully submitted,

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